IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

W. A.No. 2441 of 2006()

AGAINST THE JUDGEMENT/ORDER IN WPC.36199/2005 Dated 21/06/2006

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APPELLANT: RESPONDENTS IN WRIT PETITION:
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1. STATE OF KERALA, REP.BY THE SECRETARY
   TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT EDUCATIONAL OFFICER,
   KOZHIKODE.

3. THE ASSISTANT EDUCATIONAL OFFICER,
   QUILANDY, KOZHIKODE.

BY ADV. SRI. BENNY GERGOVERNMENT PLEADER

RESPONDENTS: PETITIONER IN THE WRIT PETITION:

ABU MANIKKOTH, ASSISTANT TEACHER,
CHEMAMNCHERY KOLAKKAD U.P.SCHOOL,
P.O.THUVVAKKODE, KOZHIKODE DISTRICT.

BY/

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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C.M. Appl. No. 1307 of 2006

&

W.A. NO. 2441 OF 2006

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Dated this the 8th day of January 2007

JUDGMENT

Abdul Gafoor,J

The delay of 124 days has been satisfactorily explained. Hence it is condoned.

2. Exts. P1 and P2 have been quashed by the learned Single Judge. Therefore this appeal.

3. Exts. P1 and P2 directed the writ petitioner to refund the subsistence allowance already paid during the period of suspension, to the extend it was in excess of the leave salary admissible to him. Learned single Judge, taking into account Sub Rule 9 of 56(B), found that subsistence allowance once paid cannot be directed to be refunded on the ground that he is not entitled for salary during the period of leave granted later for regularising the period of suspension.

4. Learned Government Pleader submits that the view so taken is not in consonance with Rule 56B part I KSR which reads as under:

> (1) "When an officer who has been suspended is reinstated or would have been so reinstated but for his

retirement on superannuation while under suspension, or has retired from service on superannuation before the conclusion of the disciplinary proceedings against him the Authority Competent to order reinstatement shall consider and make a specific order.

(a) regarding the pay and allowances to be paid to the officer for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty

(2) Notwithstanding anything contained in rule 55, where an officer under suspension dies before the disciplinary, or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid."

xxxxx xxxxxx xxxx

(9) The amount (not being the whole) of such pay and allowances determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 55.

5. In the case on hand, the period of suspension was from 27.01.2005 to 31.07.2005. It was regularised as per Ext.P1 as half pay leave to his credit to cover the period from 27.01.2005 to 03.03.2005. The remaining period namely from 04.03.05 to

31.07.2005 had to be treated as leave without allowance, during which, normally an officer will not have anything to be paid.

As per rule 55 Part I K.S Rules he was entitled to be paid subsistence allowance while on suspension. When on finalisation of disciplinary action, the period is regularised as leave and the leave so granted, due to non availability of other leave, includes leave without allowance, the subsistence allowance already paid cannot be directed to be refunded, because of sub rule 9 of Rule 56 B which provides that payment to be offered shall not be less than the subsisting allowance. Therefore, the view taken by the learned single Judge is perfectly justified. Appeal fails, dismissed.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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